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October 27, 2023

VIA ECF

Honorable Paul A. Engelmayer
United States District Court
Southern District of New York
40 Foley Square, Room 2201
New York, NY 10007

Re: *Kitchen Winners NY Inc. v. Rock Fintek LLC*, Case No. 22-cv-05276-PAE
**UPDATE TO Letter Motion for a Brief Extension of Discovery to Complete
Depositions as a Result of Adorama Parties' Discovery Delays and
Misconduct**

Dear Judge Engelmayer:

We write on behalf of Rock Fintek LLC to update the Court regarding recent developments that moot portions of Rock Fintek's request for a discovery extension and to respond to the supplemental submission earlier today (ECF 112) by counsel for the Adorama Parties.

First, at 12:01 p.m. today, counsel for Medline Industries agreed to move Medline's deposition to November 16, 2023, allowing the deposition of Hershey Weiner to proceed on November 15, 2023. While Mr. Sperber has yet to confirm that Mr. Weiner will appear, Rock Fintek expects him to abide by the parties' agreement to produce Mr. Weiner on November 15.

Second, Mr. Sperber is correct that Attorney Lauren Riddle proposed to conduct the deposition of Bezalel Gombo on November 2, 2023, a witness whom the Adorama Parties identified on October 20, 2023, but is completely misguided in seeking to gain an improper advantage by dictating to Rock Fintek its choice of counsel for two other key depositions. As explained in the parties' correspondence, attached as Exhibit A, Ms. Riddle will handle Mr. Gombo's deposition, while Rock Fintek's lead counsel Phillip Rakhunov is going to handle the depositions of Mr. Weiner and Mr. Banon.¹

It appears that the primary remaining dispute concerns the deposition of Mr. Banon. Adorama Parties' arguments as to that witness omit the timing of key events. Rock Fintek served

¹ Adorama Parties submitted an incomplete version of the email exchange between counsel, a full copy of which is attached as Exhibit A with omitted top two emails highlighted.

a subpoena on Mr. Banon on *July 27, 2023* seeking an August 31 deposition. *See* Exhibit B (proof of service). For weeks Rock Fintek was told that Mr. Sperber *expected* to represent Mr. Banon. As late as August 18, Mr. Sperber wrote “I have still not been formally retained by Mr. Banon. I am following up with him again.” *See* Exhibit C.

On August 23, 2023, Rock Fintek reached out to Mr. Banon directly seeking deposition dates and finally received confirmation that Mr. Sperber would in fact represent Mr. Banon. *Id.* Mr. Sperber offered September 21 and 27 for Mr. Banon’s deposition and undersigned counsel accepted September 21, but counsel for JNS Parties was not available on that date. *Id.* Subsequently, the parties agreed to October 11 for Mr. Banon. Then, in late September, Adorama Parties and JNS Parties were caught withholding highly relevant documents on which Mr. Banon is a routine sender and recipient, which necessitated rescheduling Mr. Banon’s deposition. Now that the Adorama Parties have finally made what appears to be a real document production, Rock Fintek would be highly prejudiced by being deprived of a deposition of a key witness, who is represented by the same counsel as the Adorama Parties.

Accordingly, Rock Fintek respectfully requests that the Court either order that Mr. Banon sit for his deposition on November 14, within the existing deadline or allow Rock Fintek a reasonable amount of time past the discovery deadline to complete that deposition, and allow the parties sufficient time to schedule and complete any remaining third party depositions.

Respectfully submitted,

/s/Phillip Rakhunov
Phillip Rakhunov

cc: All counsel (via ECF)